

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

DERRICK HOLMES,	)	
	)	
Plaintiff,	)	8:05CV369
	)	
v.	)	
	)	
CITY OF OMAHA, OMAHA POLICE	)	MEMORANDUM AND ORDER
DEPARTMENT, DON CAREY, DEREK	)	
MOIS, DAVID WESTBROOK,	)	
ROSEMARY BURDESS, THOMAS	)	
LOFTUS, UNKNOWN SOKOLIK, and	)	
JOHN DOES 1-10,	)	
	)	
Defendants.	)	
_____	)	

Timothy Ashford has moved to withdraw as counsel for the plaintiff. Filing 25. This court's filing 26 order granted the motion to withdraw "effective upon the filing of a certificate of service or affidavit indicating that the plaintiff has been served with a copy of this order." Filing 26.

Filing 26 was entered on October 27, 2005 and gave the plaintiff twenty days from the date of the order, that being November 16, 2005, to have new counsel enter an appearance on his behalf, file a motion along with supporting evidence for appointment of counsel by the court, or advise the court that he will proceed without counsel. The order stated that "[i]f none of these actions is taken within the next twenty days, this case will be subject to dismissal." Filing 26.

The court notes that Mr. Ashford filed a motion to appoint counsel for the plaintiff on November 7, 2005, (filing 29), but this motion was not supported by any evidence of plaintiff's present financial status or his reasons for believing counsel should be appointed. To date, no substitute counsel has appeared on the plaintiff's behalf, and the plaintiff has not advised the court that he intends to appear without counsel. Therefore, assuming the plaintiff himself was served with a copy of the filing 26 memorandum and order, this case would be subject to dismissal.

However, it appears from the record that the plaintiff was never advised of or served with a copy of filing 26. The filing 29 motion for appointment of counsel states Mr. Ashford had not, as of November 7, 2005, had contact with the plaintiff. The court's record states that Mr. Ashford mailed his motion to withdraw to the plaintiff on November 10, 2005. This certificate of service includes the plaintiff's home address. Filing 30. However, there is no certificate of service indicating that filing 26 was ever served on plaintiff Derrick Holmes.

IT THEREFORE HEREBY IS ORDERED:

1. The Clerk of the District Court shall serve a copy of this order on the plaintiff by mailing it to him at the address set forth in filing 30. Counsel's motion to withdraw, filing 25, is granted, effective upon such service by the clerk.
2. Plaintiff is given 20 days from the date of this order in which to either: (1) obtain the services of substitute counsel and have that attorney file an appearance in his behalf; (2) file a motion in this court for the appointment of counsel, setting forth his present financial status, and the reasons he believes counsel should be appointed; or (3) indicate, by pleading, that he will proceed in this case without counsel. If none of these actions is taken within the

next twenty days, this case will be subject to  
dismissal.

DATED this 28th day of November, 2005.

BY THE COURT:

s/ *David L. Piester*

David L. Piester  
United States Magistrate Judge